

**UNIVERSITY OF CALIFORNIA
LOS ALAMOS NATIONAL LABORATORY**

GENERAL PROVISIONS: FIXED PRICE CONSTRUCTION CONTRACTS

JULY 15, 1991

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**UNIVERSITY OF CALIFORNIA
LOS ALAMOS NATIONAL LABORATORY**

JULY 15, 1991

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ARTICLE 1. DEFINITIONS

As used throughout this document, the following terms shall have the meaning set forth below:

- (a) **UNIVERSITY** - The Regents of the University of California, a California Corporation, who operates the Los Alamos National Laboratory under Prime Contract W-7405-Eng-36 with the U. S. Government represented by the Department of Energy.
- (b) **GOVERNMENT** - The United States of America.
- (c) **DOE** - The U. S. Department of Energy.
- (d) **CONTRACTOR** - The other party to the Contract with the University.
- (e) **THIS CONTRACT** - The contractual arrangement between the University and the Contractor.
- (f) **SUBCONTRACTORS** - Lower-Tier firms who have contractual arrangements with the Contractor under this Contract.
- (g) **SUBCONTRACTS** - Subcontracts, including purchase orders under this Contract.
- (h) **CONTRACTING OFFICER** - The DOE Contracting Officer cognizant of the University's procurement policies and with the authority to make determinations under the patent and data articles of this Contract.
- (i) **CONTRACT ADMINISTRATOR** - The University representative with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings.

ARTICLE 2. OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this Contract, or to any benefit arising from it. However, this article does not apply to this Contract to the extent that this Contract is made with a corporation for the corporation's general benefit.

ARTICLE 3. GRATUITIES

- (a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the University determines that the Contractor, its agent, or another representative
 - (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer,

official, or employee of the University; and

- (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.
- (b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.
- (c) If this Contract is terminated under paragraph (a) above, the University is entitled
 - (1) To pursue the same remedies as in a breach of the Contract; and
 - (2) In addition to any other damages provided by law, to exemplary damages of not less than 3 times nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the University. (This subparagraph (c)(2) is applicable only if this Contract uses money appropriated to the Department of Defense.)
- (d) The rights and remedies of the University provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

ARTICLE 4. COVENANT AGAINST CONTINGENT FEES

- (a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this Contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the University shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of the contingent fee.
- (b) "Bona fide agency," as used in this article, means an established commercial or selling agency, maintained by a Contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain government contracts or subcontracts nor holds itself out as being able to obtain any Government contract or subcontracts through improper influence.

"Bona fide employee," as used in this article, means a person, employed by a Contractor and subject to the Contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to

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exert improper influence to solicit or obtain Government contracts or subcontracts nor holds out as being able to obtain any Government contract or subcontracts through improper influence.

"Contingent fee," as used in this article, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract or subcontract.

"Improper influence," as used in this article, means any influence that induces or tends to induce a University employee or officer to give consideration or to act regarding a University contract or subcontract on any basis other than the merits of the matter.

ARTICLE 5. SUSPENSION OF WORK

- (a) The University may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this Contract for the period of time that the University determines appropriate for the convenience of the University.
 - (b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the University in the administration of this Contract, or (2) by the University's failure to act within the time specified in this Contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the Contract modified in writing accordingly. However, no adjustment shall be made under this article for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this Contract.
 - (c) A claim under this article shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the University in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the Contract.
- (a) Cost or pricing data. If the Contractor has submitted cost or pricing data in connection with the pricing of any modification to this Contract, unless the pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the Contract Administrator or a representative who is an employee of the University shall have the right to examine and audit all books, records, documents, and other data of the Contractor (including computations and projections) related to negotiating, pricing or performing the modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. In the case of pricing any modification, the Comptroller General of the United States or a representative who is an employee of the Government shall have the same rights.
 - (b) Availability. The Contractor shall make available at its office at all reasonable times the materials described in paragraph (a) above, for examination, audit, or reproduction, until 3 years after final payment under this Contract, or for any other period specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR). FAR subpart 4.7, Contractor Records Retention, in effect on the date of this Contract, is incorporated by reference in its entirety and made a part of this Contract.
 - (1) If this Contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.
 - (2) Records pertaining to appeals under the Disputes article or to litigation or the settlement of claims arising under or relating to the performance of this Contract shall be made available until disposition of such appeals, litigation, or claims.
 - (c) The Contractor shall insert an article containing all the provisions of this article, including this paragraph (c), in all subcontracts over \$10,000 under this Contract, altering the article only as necessary to identify properly the contracting parties and the contracting office under the University prime contract.

ARTICLE 7. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA MODIFICATIONS - SEALED BIDDING

NOTE: THIS ARTICLE APPLIES TO THIS CONTRACT IF THE ORIGINAL AWARD RESULTED FROM THE USE OF SEALED BIDDING.

- (a) This article shall become operative only for any modification to this Contract involving aggregate increases and/or decreases in costs, plus applicable profits, of more than \$100,000

ARTICLE 6. AUDIT - SEALED BIDDING

NOTE: THIS ARTICLE APPLIES TO THIS CONTRACT IF THE ORIGINAL AWARD RESULTED FROM THE USE OF SEALED BIDDING.

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except that this article does not apply to any modification for which the price is

- (1) Based on adequate price competition;
 - (2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or
 - (3) Set by law or regulation.
- (b) If any price, including profit, negotiated in connection with any modification under this article, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price shall be reduced accordingly and the Contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this article becomes operative under paragraph (a) above.
- (c) Any reduction in the Contract price under paragraph (b) above due to defective data from a prospective subcontractor that was not subsequently awarded a subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- (d) (1) If the University Contract Administrator determines under paragraph (b) of this article that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:
- (i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the Contract would not have been modified even if accurate, complete and current cost or pricing data has been submitted.
 - (ii) The University Contract Administrator should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the University Contract Administrator.
- (iii) The Subcontract was based on an agreement about the total cost of the subcontract and there was no agreement about the cost of each item produced under the Contract.
 - (iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (2)(i) Except as prohibited by subdivision (d)(2)(ii) (below) of this article, an offset in an amount determined appropriate by the University Contract Administrator based upon the facts shall be allowed against the amount of a Contract price reduction if-
- (A) The Contractor certifies to the University Contract Administrator that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and
 - (B) The Contractor proves that the cost or pricing data were available before the data of agreement on the price of the Contract (or price of the modification) and that the data were not submitted before such data.
- (ii) An offset shall not be allowed if-
- (A) The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or
 - (B) The University proves that the facts demonstrate that the Contract price would not have increased in the amount to be offset even if the available data had been submitted before the data of agreement on price.

ARTICLE 8. SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS - SEALED BIDDING

NOTE: THIS ARTICLE APPLIES TO THIS CONTRACT IF THE ORIGINAL AWARD RESULTED FROM THE USE OF SEALED BIDDING

- (a) The requirements of paragraphs (b) and (c) of this article shall (1) become operative only for any modification to this Contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed \$100,000 and (2) be limited to such modifications.

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(b) Before awarding any subcontract expected to exceed \$100,000 when entered into, or pricing any subcontract modification involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed \$100,000, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is

(1) Based on adequate competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulation.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in subsection 15.804-4 of the Federal Acquisition Regulation that, to the best of its knowledge and belief, the data submitted under paragraph (b) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this article, including this paragraph (d), in each subcontract that exceeds \$100,000 when entered into.

ARTICLE 9. EXAMINATION OF RECORDS BY COMPTROLLER GENERAL

(a) This article applies if this Contract exceeds \$10,000 and was entered into by negotiation.

(b) The Comptroller General of the United States or a duly authorized representative from the General Accounting Office shall, until 3 years after final payment under this Contract or for any shorter period specified in Federal Acquisition Regulation (FAR) Subpart 4.7, Contractor Records Retention, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this Contract.

(c) The Contractor agrees to include in first-tier subcontracts under this Contract an article to the effect that the Comptroller General shall, until 3 years after final payment under the subcontract or for any shorter period specified in FAR Subpart 4.7, have access to and the right to examine any of the subcontractor's directly pertinent books, documents, papers, or their records involving transactions related to the subcontract. "Subcontract," as used in this article, excludes (1) purchase orders not exceeding \$10,000 and (2) subcontracts or purchase orders for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.

(d) The periods of access and examination in paragraphs (b) and (c) above for records relating to (1) appeals under the Disputes article, (2) litigation or settlement of claims arising from the performance of this Contract, or (3) costs and expenses of this Contract to which the Comptroller General or a duly authorized representative from the General Accounting Office has taken exception shall continue until such appeals, litigation, claims, or exceptions are disposed of.

ARTICLE 10. AUDIT-NEGOTIATIONS

NOTE: THIS ARTICLE APPLIES TO THIS CONTRACT IF THE ORIGINAL AWARD RESULTED FROM NEGOTIATION.

(a) Examination of costs.

If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of these, the Contractor shall maintain and the Contract Administrator or representatives of the University shall have the right to examine and audit books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this Contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the Contract.

(b) Cost or pricing data

If, pursuant to law, the Contractor has been required to submit cost or pricing data in connection with pricing this Contract or any modification to this Contract, the University or representatives of the Government shall have the right to examine and audit all books, records, documents, and other data of the Contractor (including computations and projections) related to proposing negotiating, pricing, or performing the Contract or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used.

(c) Reports

If the Contractor is required to furnish cost, funding, or performance reports, the University or representatives of the Government shall have the right to examine and audit books, records, other documents, and supporting materials, for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

(d) Availability

The Contractor shall make available at its office at all reasonable times the materials

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described in paragraphs (a) and (b) above, for examination, audit, or reproduction, until 3 years after final payment under this Contract, or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation, or for any longer period required by statute or by other articles of this Contract, in addition

- (1) If this Contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement; and
 - (2) Records relating to appeals under the Disputes article or to litigation or the settlement of claims arising under or relating to this Contract shall be made available until such appeals, litigation, or claims are disposed of.
- (c) The Contractor shall insert an article containing all the terms of this article, including this paragraph (e), in all subcontracts over \$10,000 under this Contract, altering the article only as necessary to identify properly the contracting parties.

ARTICLE 11. CERTIFIED COST OR PRICING DATA

- (a) (1) The contractor shall require under the situations described in (2) below, unless exempted under the exceptions set forth in (3) below, each subcontractor under this contract to submit cost or pricing data and to certify that, to the best of his knowledge and belief, such cost or pricing data are accurate, complete and current.
- (2) Except as provided in (3) below, certified cost or pricing data shall be submitted prior to (i) the award of each subcontract, the price of which is expected to exceed \$100,000 and (ii) the negotiation of the price of each change or modification to a subcontract under this Contract for which the price adjustment is expected to exceed \$100,000.
- (6) Certified cost or pricing data need not be furnished pursuant to this paragraph (a) where (i) the Contractor has not been required to furnish cost or pricing data; or (ii) the price adjustment is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or the prices are set by law or regulation; and the Contractor states in writing the basis for applying this exception.
- (4) In submitting the cost or pricing data, the contractor shall require the subcontractor to use the form of certificate set forth in paragraph (b) below and to certify that the data are accurate, complete, and current. Such certificate and data (actual or identified, as provided in the certificate prescribed below) shall be submitted by subcontractors to the

next higher-tier subcontractor or the Contractor, as applicable, for retention.

- (b) The certificates required by this article shall be in the form set forth below.

Subcontractor's Certificate of Current Cost or Pricing Data

This is to certify that, to the best of my knowledge and belief, cost or pricing data submitted in writing, or specifically identified in writing if actual submission of the data is impracticable (see FAR 15.804-6(d)), to the Contractor in support of _____* are accurate, complete, and current as of _____**

Firm
Name
Title

Date of execution***

*Identify the proposal, quotation, request for price adjustment, or other submission involved.

**Insert the day, month, and year when price negotiations were concluded and price agreement was reached.

***Insert the date, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to

- (c) For purposes of verifying that certified cost or pricing data submitted in conjunction with the negotiation of this Contract change or other modification involving an amount in excess of \$100,000 were accurate, complete, and current, the University or Representatives of the Government shall, until the expiration of 3 years from the date of final payment under this contract, have the right to examine those books, records, documents, papers and other supporting data which involve transactions related to this contract or which will permit adequate evaluation of the cost or pricing data submitted, along with the computation and projections used therein.
- (d) If the original price of this Contract exceeds \$100,000 or the price of any change or other modification to this contract is expected to exceed \$100,000, the contractor agrees to furnish the University certified cost or pricing data, using the certificate set forth in paragraph (b) above, unless the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.
- (e) The requirement for submission of certified cost or pricing data with respect to any change or other modification does not apply to any contract change or other modification, at any tier, where the contract is firm fixed-price or fixed price with escalation unless such change or other modification result from a change or modification to the Contract, nor does it apply

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to a subcontract change or modification, at any tier, where the contract is not firm fixed-price or fixed price with escalation unless the price for such change or other modification becomes reimbursable under the contract.

- (f) The Contractor agrees to insert paragraph (c) without change and the substance of paragraphs (a), (b), (c), (d), (e), and (f) of this article in each subcontract hereunder in excess of \$100,000 and in each subcontract of \$100,000 or less, at the time of making a change or other modification thereto in excess of \$100,000.
- (g) If the University contractor determines that any price, including profit or fee, negotiated in connection with this Contract or any cost reimbursable under this Contract was increased by any significant sums because the Contractor, or any subcontractor pursuant to this article or any subcontract article herein required, furnished incomplete or inaccurate cost or pricing data or data not current as certified in the contractor's certificate of current cost or pricing data, then such price or cost shall be reduced accordingly and the Contract shall be modified in writing to reflect such reduction.
- (h) Failure of the University and the contractor to agree on any of the matters in paragraph (g) above shall be a dispute concerning a question of fact subject to the Disputes provisions of this Contract.

ARTICLE 12. UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS

- (a) It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in performing contracts or subcontracts let by any Federal agency.
- (b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the DOE as may be necessary to determine the extent of the Contractor's compliance with this article.
- (c) As used in this Contract, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern

- (1) Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more "socially and economically disadvantaged individuals" and
- (2) Whose management and daily business operations are controlled by one or more of such individuals.

The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small Business Act.

- (d) Constructors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

ARTICLE 13. SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN

NOTE: THIS ARTICLE APPLIES TO THIS CONTRACT ONLY IF THE PRICE EXCEEDS \$1,000,000.

- (a) This article does not apply to small business concerns.
- (b) "Commercial product," as used in this article, means a product in regular production that is sold in substantial quantities to the general public and/or industry at established catalog or market prices. It also means a product which, in the opinion of the University, differs only insignificantly from the Contractor's commercial product. "Contract," as used in this article, means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the Contract or subcontract.
- (c) The offeror, upon request by the University, shall submit and negotiate a subcontracting plan, where applicable, which addresses separately, subcontracting with small business concerns and small disadvantaged business concerns and which shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the University. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

ALTERNATE PARAGRAPH (c):

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NOTE: THIS PARAGRAPH (c) APPLIES IN LIEU OF THE ABOVE PARAGRAPH (c) ONLY IF CONTRACTING BY SEALED BIDDING.

- (c) The apparent low bidder, upon request by the University, shall submit a subcontracting plan, where applicable, which addresses separately subcontracting with small business concerns and small disadvantaged business concerns, and which shall be included in and made part of the resultant Contract. The subcontracting plan shall be submitted within the time specified by the University. Failure to submit the subcontracting plan shall make the bidder ineligible for award of a Contract.
- (d) The offeror's subcontracting plan shall include the following:
 - (1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business concerns and small disadvantaged business concerns as subcontractors. The offeror shall include all subcontracts that contribute to Contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.
 - (2) A statement of
 - (i) Total dollars planned to be subcontracted;
 - (ii) Total dollars planned to be subcontracted to small business concerns; and
 - (iii) Total dollars planned to be subcontracted to small disadvantaged business concerns.
 - (3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to (i) small business concerns and (ii) small disadvantaged business concerns.
 - (4) A description of the method used to develop the subcontracting goals in (1) above.
 - (5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Automated Source System (PASS) of the Small Business Administration, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small and small disadvantaged business concerns trade associations).
 - (6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with (i) small business concerns and (ii) small disadvantaged business concerns.
- (7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.
- (8) A description of the efforts the offeror will make to assure that small business concerns and small disadvantaged business concerns have an equitable opportunity to compete for subcontracts.
- (9) Assurances that the offeror will include the article in this Contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns" in all subcontracts that offer further subcontractors (except small business concerns) who receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility), to adopt a plan similar to the plan agreed to by the offeror.
- (10) Assurances that the offeror will (i) cooperate in any studies or surveys as may be required, (ii) submit periodic reports in order to allow the Government to determine the extent of compliance by the offeror with the subcontracting plan, (iii) submit Standard Form (SF) 294, only (DOE contractors need not submit SF 295) on a quarterly basis no later than the last day of March, June, September and December, and upon Contract completion, in accordance with the instructions on the form except the report shall be submitted quarterly rather than semiannually and additionally shall indicate at the remarks block the number and dollar amount of awards made to labor surplus area concerns, to the extent such reporting is required by the terms of their contract, and (iv) ensure that its subcontractors agree to submit SF 294 in accordance with the instructions at (iii) above.
- (11) A recitation of the types of records the offeror will maintain to demonstrate procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of its efforts to locate small and small disadvantaged business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):
 - (i) Source lists, guides, and other data that identify small and small disadvantaged business concerns.
 - (ii) Organizations contacted in an attempt to locate sources that are small or small disadvantaged business concerns.
 - (iii) Records on each subcontract solicitation resulting in an award of

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more than \$100,000, indicating (A) whether small business concerns were solicited and if not, why not, (B) whether small disadvantaged business concerns were solicited and if not, why not, and (C) if applicable, the reason award was not made to a small business concern.

- (iv) Records of any outreach efforts to contact (A) trade associations, (B) business development organizations, and (C) conferences and trade fairs to locate small and small disadvantaged business sources.
 - (v) Records of internal guidance and encouragement provided to buyers through (A) workshops, seminars, training, etc., and (B) monitoring performance to evaluate compliance with the program's requirements.
 - (vi) On a subcontract-by-subcontract basis, records to support award data submitted by the offeror to the University, including the name, address, and business size of each subcontractor. Contractors having company or division-wide annual plans need not comply with this requirement.
- (e) In order to effectively implement this plan to the extent consistent with efficient subcontract performance, the Contractor shall perform the following functions:
- (1) Assist small business and small disadvantaged business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business and small disadvantaged subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.
 - (2) Provide adequate and timely consideration of the potentialities of small business and small disadvantaged business concerns in all "make-or-buy" decision.
 - (3) Counsel and discuss subcontracting opportunities with representatives of small and small disadvantaged business firms.
- (f) A master subcontracting plan on a plant or division-wide basis which contains all the elements required by (d) above, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this article; provided, (1) the master plan has been approved, (2) the offeror provides copies of the approved master plan and evidence of its approval to the University, and (3) goals and any deviations from the master plan deemed necessary by the University to satisfy

the requirements of this Contract are set forth in the individual subcontracting plan.

- (g)
- (1) If a commercial product is offered, the subcontracting plan required by this article may relate to the offeror's production generally, for both commercial and noncommercial products, rather than solely to the University contract. In these cases, the offeror shall, with the concurrence of the University, submit one company-wide or division-wide annual plan.
 - (2) The annual plan shall be reviewed for approval by the DOE, or by an agency satisfactory to the DOE.
 - (3) The approved plan shall remain in effect during the offeror's fiscal year for all of the offeror's commercial products.
- (h) Prior compliance of the offeror with other such subcontracting plans under previous contracts or subcontracts will be considered by the University in determining the responsibility of the offeror for award of the Contract.
- (i) The failure of the Contractor to comply in good faith with (1) the article of this Contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns," or (2) an approved plan required by this article, shall be a material breach of the Contract.

ARTICLE 14. UTILIZATION OF WOMEN-OWNED SMALL BUSINESSES

- (a) "Women-owned small businesses," as used in this article, means small business concerns that are at least 51 percent owned by women who are United States citizens and who also control and operate the business.

"Control," as used in this article, means exercising the power to make policy decisions.

"Small Business Concerns" as used in this article, means a concern, including its affiliates, that is independently owned and operated, not dominant in its field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR 121."

"Operate," as used in this article, means being actively involved in the day-to-day management of the business.

- (b) It is the policy of the United States that women-owned small businesses shall have the maximum practicable opportunity to participate in performing contracts and subcontracts awarded by any Federal agency or its prime contractors.

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- (c) The Contractor agrees to use its best efforts to give women-owned small businesses the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with the efficient performance of its Contract.
- (d) The Contractor may rely on written representations by its subcontractor regarding their status as women-owned small business.

ARTICLE 15. UTILIZATION OF LABOR SURPLUS AREA CONCERNS

- (a) Applicability. This article is applicable if this Contract exceeds \$25,000.
- (b) Policy. It is the policy of the Government to award contracts and subcontracts to concerns that agree to perform substantially in labor surplus areas (LSA's) when this can be done consistent with the efficient performance of the contract or subcontract and at prices no higher than are obtainable elsewhere. The Contractor agrees to use its best efforts to place subcontracts in accordance with this policy.
- (c) Order of preference. In complying with paragraph (b) above and with paragraph (c) of the article of this Contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns", the Contractor shall observe the following order of preference in awarding subcontracts:
 - (1) Small business concerns that are LSA concerns,
 - (2) Other small business concerns, and
 - (3) Other LSA concerns.
- (d) Definitions.

"Labor surplus area," as used in this article, means a geographical area identified by the Department of Labor in accordance with 20 CFR 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

"Labor surplus area concern," as used in this article, means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

ARTICLE 16. LABOR SURPLUS AREA SUBCONTRACTING PROGRAM

NOTE: THIS ARTICLE APPLIES TO THIS CONTRACT ONLY IF THE PRICE IS IN EXCESS OF \$500,000.

- (a) See the Utilization of Labor Surplus Area Concerns article of this Contract for applicable definitions.
- (b) The Contractor agrees to establish and conduct a program to encourage labor surplus area (LSA) concerns to compete for subcontracts within their capabilities when the subcontracts are consistent with the efficient performance of the contract at prices no higher than obtainable elsewhere. The Contractor shall
 - (1) Designate a liaison officer who will (i) maintain liaison with authorized representatives of the Government on LSA matters, (ii) supervise compliance with the Utilization of Labor Surplus Area Concerns article, and (iii) administer the Contractor's labor surplus area subcontracting program;
 - (2) Provide adequate and timely consideration of the potentialities of the LSA concerns in all make-or-buy decisions;
 - (3) Ensure that LSA concerns have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of offers, quantities, specifications, and delivery schedules so as to facilitate the participation of LSA concerns;
 - (4) Include the Utilization of Labor Surplus Area concerns article in subcontracts that offer substantial LSA subcontracting opportunities; and
 - (5) Maintain records showing (i) the procedures adopted and (ii) the Contractor's performance, to comply with this article. The records will be kept available for review by the Government until the expiration of 1 year after the award of this Contract, or for such longer period as may be required by any other article of this Contract or by applicable law or regulations.
- (c) The Contractor further agrees to insert in any related subcontract that may exceed \$500,000 and that contains the Utilization of Labor Surplus Area Concerns article, terms that conform substantially to the language of this article, including this paragraph (c), and to notify the University of the names of subcontractors.

ARTICLE 17. NOTICE TO THE UNIVERSITY OF LABOR DISPUTES

- (a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice, including all relevant information, to the Contract Administrator.
- (b) The Contractor agrees to insert the substance of this article, including this paragraph (b),

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in any subcontract to which a labor dispute may delay the timely performance of this Contract; except that each lower-tier subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the lower-tier subcontractor shall immediately notify the next higher tier subcontractor or the Contractor, as the case may be, of all relevant information concerning the dispute.

ARTICLE 18. CONVICT LABOR

The Contractor agrees not to employ any person undergoing sentence of imprisonment in performing this Contract except as provided by 18 U.S.C 4082(c)(2) and Executive Order 11755, December 29, 1973.

ARTICLE 19. CONSTRUCTION STANDARDS

(a) DAVIS-BACON ACT (40 U.S.C 276a-276a-7)

- (1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part thereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (4) of this article; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in the article entitled "Apprentices and Trainees". Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time

spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (2) of this article) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- (2)(i) The University shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The University shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria has been met:

- (A) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (B) The classification is utilized in the area by the construction industry; and
- (C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rate contained in the wage determination.

- (ii) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the University agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the University to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator of the Wage and Hour Division, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the University or will notify the University within the 30-day period that additional time is necessary.

- (iii) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the University do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the University shall refer the questions, including the views of all

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interested parties and the recommendation of the University, to the Administrator for determination. The Administrator of the Wage and Hour Division, or an authorized representative, will issue a determination within 30 days of receipt and so advise the University or will notify the University within the 30-day period that additional time is necessary.

- (iv) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (2)(ii) or (2)(iii) of this article, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
- (3) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, that the Secretary of Labor has found, upon the written request of the Contractor, that applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (5) Paragraphs (1) through (4) of the article shall apply to this Contract to the extent that it is subject to the Davis-Bacon Act.
- (b) CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION (40 U.S.C. 327-333)

This Contract is subject to the Contract Work Hours and Safety Standards Act and to the applicable rules, regulations, and interpretations of the Secretary of Labor.
 - (1) Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such work week.
 - (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in paragraph (1) of this article, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (1) of this article, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (1) of this article.
 - (3) Withholding for unpaid wages and liquidated damages. The University Contract Administrator, with DOE approval, shall upon his/her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (2) of this article.
 - (4) Subcontracts. The Contractor shall insert in any subcontracts the provisions set forth in paragraphs (1) through (4) of this article and also an article requiring the subcontractors to include these provisions in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provision set forth in paragraphs (1) through (4) of this article.
- (c) APPRENTICES AND TRAINEES
 - (1) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person

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is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hourly Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (2) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of

Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination of the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (3) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, and 29 CFR Part 30.

(d) PAYROLLS AND BASIC RECORDS

- (1) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and

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actual wages paid. Whenever the Secretary of Labor has found under paragraph (4) of the article entitled "Davis-Bacon Act" that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (2)(i) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the University Contract Administrator. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (1) of this article. The information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents, Government Printing Office Washington, D.C. 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors.
- (ii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:
 - (A) That the payroll for the payroll period contains the information required to be maintained under paragraph (1) of this article entitled "Payrolls and Basic Records" and that such information is correct and complete;
 - (B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made, either directly or indirectly, from the full wages earned, other than permissible

deductions as set forth in the Regulations, 29 CFR Part 3; and

- (C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.
 - (iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (2)(ii) of this article.
 - (iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 3729 of the United States Code.
- (3) The Contractor or subcontractor shall make the records required under paragraph (1) of this article available for inspection, copying, or transcription by the University Contract Administrator or the Department of Labor or their authorized representatives. The Contractor and subcontractors shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the University Contract Administrator may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.
- (e) COMPLIANCE WITH COPELAND ACT REQUIREMENTS

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract.
 - (f) WITHHOLDING

The University Contract Administrator shall upon his/her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers employed by the Contractor or any subcontractor the full amount of wages required by the

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Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Contract, the University Contract Administrator may, after written notice to the Contractor take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(g) SUBCONTRACTS (LABOR STANDARDS)

The Contractor or subcontractor shall insert in any subcontracts the articles entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act- Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Act Requirements," "Withholding of Funds," "Subcontracts (Labor Standards)," "Contract Termination-Debarment," "Disputes Concerning Labor Standards," "Compliance With Davis-Bacon and Related Act Requirements," and "Certification of Eligibility," and such other articles as the University Contract Administrator may, by appropriate instructions require, and also an article requiring the subcontractors to include these articles in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the Contract articles cited above.

) CONTRACT TERMINATION; DEBARMENT

A breach of the Contract articles entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act-Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Act Requirements," "Subcontracts (Labor Standards)," "Compliance with Davis-Bacon and Related Act Requirements," and "Certification of Eligibility," may be grounds for termination of the Contract, and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

(i) DISPUTES CONCERNING LABOR STANDARDS

Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes article of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this article include disputes between the Contractor (or any of its subcontractors) and the University, the U.S. Department of Labor, or the employees or their representatives.

(j) COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REQUIREMENTS

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR

Parts 1, 3, and 5 are herein incorporated by reference in this Contract.

(k) CERTIFICATION OF ELIGIBILITY

- (1) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (2) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 51.2(a)(1).
- (3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

ARTICLE 20. EQUAL OPPORTUNITY

- (a) If, during any 12-month period (including the 12 months preceding the award of this Contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) below. Upon request, the Contractor shall provide information necessary to determine the applicability of this article.
- (b) During performance of this Contract, the Contractor agrees as follows:
 - (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
 - (2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.
 - (3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the University that explain this article.
 - (4) The Contractor shall, in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without

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regard to race, color, religion, sex, or national origin.

- (5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the University advising the labor union or workers' representative of the Contractor's commitments under this article, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (7) The Contractor shall furnish to the University all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.
- (8) The Contractor shall permit access to its books, records, and accounts by the University or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with applicable rules, regulations, and orders.
- (9) If the OFCCP determines that the Contractor is not in compliance with this article or any rule, regulation, or order of the Secretary of Labor, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or subcontracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (10) The Contractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this article in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.
- (11) The Contractor shall take such action with respect to any subcontract or purchase order as the University may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is

threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

- (c) Notwithstanding any other article in this Contract, disputes relative to this article will be governed by the procedures in 41 CFR 60-1.1.

ARTICLE 21. AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION

(a) Definitions

"Covered area," as used in this article, means the geographical area described in the solicitation for this Contract.

"Director," as used in this article, means Director, Office of Federal Contract Compliance Programs (OFCCP), United States Department of Labor, or any person to whom the Director delegates authority.

"Employer identification number," as used in this article, means the Federal Social Security number used on the employers quarterly federal tax return, U.S. Treasury Department Form 941.

"Minority," as used in this article, means

- (1) American Indian or Alaskan Native (all persons, having origins in any of the original peoples of North America and Maintaining identifiable tribal affiliations through membership and participation or community identification).
 - (2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (3) Black (all persons having origins in any of the black African racial groups not of Hispanic origin);
 - (4) Hispanic (all persons of Mexican, Puerto Rican, Cuban Central or South American, or other Spanish culture or origin, regardless of race).
- (b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 shall include this article and the Notice containing the goals for minority and female Participation stated in the solicitation for this Contract.
 - (c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association,

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its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity article, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.

- (d) The Contractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this article. The goals stated in the solicitation for this Contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.
- (e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor's obligations under this article, Executive Order 11246, as amended, or the regulations thereunder.
- (f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- (g) The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this article shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:
 - (1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each

construction project. The Contractor shall ensure that foremen, superintendents, and other on site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.

- (2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- (3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.
- (4) Immediately notify the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- (5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) above.
- (6) Disseminate the Contractor's equal employment policy by
 - (i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its Contract obligations;
 - (ii) Including the policy in any policy manual and in collective bargaining agreements;

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- (iii) Publicizing the policy in the company newspaper, annual report, etc.;
 - (iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and
 - (v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.
- (7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on site supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter
 - (8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.
 - (9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, sent written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
 - (10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's work force.
 - (11) Validate all tests and other selection requirements where required under 41 CFR 60-3.
 - (12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.
- (13) Ensure that seniority practices job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this Contract are being carried out.
 - (14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - (15) Maintain a record of solicitations for subcontracts for minority and female construction subcontractors and suppliers, including circulation of solicitations to minority and female subcontractor associations and other business associations.
 - (16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.
- (h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16). The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the Contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16), provided the Contractor
 - (1) Actively participates in the group;
 - (2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;
 - (3) Ensures that concrete benefits of the program are reflected in the Contractor's minority and female work force participation;
 - (4) Makes a good-faith effort to meet its individual goals and timetables; and
 - (5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
 - (i) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative

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action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.

- (j) The Contractor shall not use goals in affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- (k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.
- (l) The Contractor shall carry out such sanctions and penalties for violation of this article and of the Equal Opportunity article, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this article and Executive Order 11246, as amended.
- (m) The Contractor in fulfilling its obligations under this article shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) above, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this article, the Director shall take action as prescribed in 41 CFR 60-4.8.
- (n) The Contractor shall designate a responsible official to
 - (1) Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;
 - (2) Submit reports as may be required by the University; and
 - (3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.
- o) Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g.,

those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

ARTICLE 22. EQUAL OPPORTUNITY PREAWARD CLEARANCE OF SUBCONTRACTS

NOTE: THIS ARTICLE APPLIES TO THIS CONTRACT ONLY IF THE PRICE IS AT LEAST \$1,000,000.

Notwithstanding the article of this Contract entitled "Subcontractors," the Contractor shall not enter into a first-tier subcontract for an estimated or actual amount of \$1 million or more without obtaining in writing from the University a clearance that the proposed subcontractor is in compliance with equal opportunity requirements and therefore is eligible for award.

ARTICLE 23. AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS

(a) Definitions

"Appropriate office of the State employment service system," as used in this article, means the local office of the Federal-State national system of public employment offices assigned to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

"Openings that the Contractor proposes to fill within its own organization," as used in this article, means employment openings for which no one outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) will be considered and includes any openings that the Contractor proposes to fill from regularly established "recall" lists.

"Openings that the Contractor proposes to fill under a customary and traditional employer-union hiring arrangement," as used in this article, means employment openings that the Contractor proposes to fill from union halls, under their customary and traditional employer-union hiring relationship.

"Suitable employment openings," as used in this article

- (1) Includes, but is not limited to, openings that occur in jobs categorized as

- (i) Production and nonproduction;
- (ii) Plant and office;
- (iii) Laborers and mechanics;
- (iv) Supervisory and nonsupervisory;

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- (v) Technical; and
 - (vi) Executive, administrative, and professional positions compensated on a salary basis of less than \$25,000 a year; and
- (2) Includes full time employment, temporary employment of over 3 days, and part-time employment, but not openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement, nor openings in an educational institution that are restricted to students of that institution.
- (b) General
- (1) Regarding any position for which the employee for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a special disabled or Vietnam Era veteran. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled and Vietnam Era veterans without discrimination based upon their disability or veterans' status in all employment practices such as
 - (i) Employment;
 - (ii) Upgrading;
 - (iii) Demotion or transfer;
 - (iv) Recruitment;
 - (v) Advertising;
 - (vi) Layoff or termination;
 - (vii) Rates of pay or other forms of compensation; and
 - (viii) Selection for training, including apprenticeship.
 - (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.
- (c) Listing openings
- (1) The Contractor agrees to list all suitable employment openings existing at Contract award or occurring during Contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this Contract. An independent corporate affiliate is exempt from this requirement.
- (2) State and local Government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service.
 - (3) The listing of suitable employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.
 - (4) Whenever the Contractor becomes contractually bound to the listing terms of this article, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this Contract article.
 - (5) Under the most compelling circumstances, an employment opening may not be suitable for listing, including situations when (i) the University's needs cannot reasonably be supplied, (ii) listing would be contrary to national security, or (iii) the requirement of listing would not be in the Government's interest.
- (d) Applicability
- (1) This article does not apply to the listing of employment openings which occur and are filled outside the 50 states, the District of Columbia, Puerto Rico, Guam, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.
 - (2) The terms of paragraph (c) above of this article do not apply to openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.
- (e) Postings
- (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance

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in employment qualified special disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.

- (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance programs, Department of Labor (Director), and provided by or through the University.
- (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified special disabled and Vietnam Era veterans.

(f) Noncompliance

If the Contractor does not comply with the requirements of this article, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) Subcontracts

The Contractor shall include the terms of this article in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

ARTICLE 24. EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

- (a) The Contractor shall report at least annually, as required by the Secretary of Labor, on:
 - (1) The number of special disabled veterans and the number of veterans of the Vietnam era in the work force of the Contractor by job category and hiring location; and
 - (2) The total number of new employees hired during the period covered by the report, and of that total, the number of special disabled veterans, and the number of veterans of the Vietnam era.
- (b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans Employment Report VETS-100."
- (c) Reports shall be submitted no later than March 31 of each year beginning March 31, 1988.
- (d) The employment activity report required by paragraph (a)(2) of this article shall reflect total hires during the most recent 12-month

period as of the ending date selected for the employment profile report required by paragraph (a) (1) of this article. Contractors may select an ending date: (1) As of the end of any pay period during the period January through March 1st of the year the report is due, or (2) as of December 31, if the Contractor has previously written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

- (e) The count of veterans reported according to paragraph (a) of this article shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 2012(d) shall invite all special disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 2012 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided, that the information will be kept confidential, that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 2012.
- (f) The Contractor shall include the terms of this article in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

ARTICLE 25 AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS

(a) General

- (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental handicap. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as-

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

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(b) Postings

- (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped individuals and (ii) the rights of applicants and employees.
- (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the University.
- (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified physically and mentally handicapped individuals.

(c) Noncompliance.

If the Contractor does not comply with the requirements of this article, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) Subcontracts

The Contractor shall include the terms of this article in every Subcontract or purchase order in excess of \$2,500 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

ARTICLE 26. CLEAN AIR AND WATER

NOTE: THIS ARTICLE APPLIES TO THIS CONTRACT ONLY IF THE ESTIMATED COST, TOGETHER WITH ANY FIXED FEE, IS (A) IN EXCESS OF \$100,000; (B) A FACILITY TO BE USED HAS BEEN THE SUBJECT OF A CONVICTION UNDER THE APPLICABLE PORTION OF THE AIR ACT (42 U.S.C. 7413(C)(1)) OR THE WATER ACT (33 U.S.C. 1319(C)) AND IS LISTED BY EPA AS A VIOLATING FACILITY; OR (C) THE ACQUISITION IS NOT EXEMPT UNDER FAR 23.104.

- (a) "Air Act," as used in this article, means the Clean Air Act (42 U.S.C. 7401 et seq.).

"Clean air standards," as used in this article, means

- (1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted

under the Air Act or Executive Order 11738;

- (2) An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7410(d));
- (3) An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or
- (4) An approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 7412(d)).

"Clean water standards," as used in this article, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

"Compliance," as used in this article, means compliance with

- (1) Clean air or water standards; or
- (2) A schedule or plan ordered or approved by a court of competent jurisdiction, the Environment Protection Agency, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

"Facility," as used in this article, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.

"Water Act," as used in this article, means Clean Water Act (33 U.S.C. 1251 et seq.).

- (b) "The Contractor agrees

- (1) To comply with all the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and Section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and Section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this Contract;

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- (2) That no portion of the work required by this Contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this Contract was awarded unless and until the EPA eliminates the name of the facility from the listing;
- (3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the Contract is being performed; and
- (4) To insert the substance of this article into any nonexempt subcontract, including this subparagraph (b)(4).

ARTICLE 27. BUY AMERICAN ACT - CONSTRUCTION MATERIALS

- (a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic construction material.

"Components," as used in this article, means those articles, materials, and supplies incorporated directly into construction materials.

"Construction materials," as used in this article, means articles, materials, and supplies brought to the construction site for incorporation into the building or work.

"Domestic construction material," as used in this article, means (1) an unmanufactured construction material mined or produced in the United States, or (2) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to subparagraph 25.202(a)(3) of the Federal Acquisition Regulation (FAR) shall be treated as domestic.

- (b) The Contractor agrees that only domestic construction material will be used by the Contractor, subcontractors, materialmen, and suppliers in the performance of this Contract, except for foreign construction materials, if any, listed in this Contract.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954, as amended, and Subpart 25.2 of the FAR).

ARTICLE 28. ADDITIONAL BOND SECURITY

The Contractor shall promptly furnish additional security required to protect the Government and

University and persons supplying labor or materials under this Contract if

- (a) Any surety upon any bond furnished with this Contract becomes unacceptable to the University;
- (b) Any surety fails to furnish reports on its financial condition as required by the University; or
- (c) The Contract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the University.

ARTICLE 29. INSURANCE - WORK ON A GOVERNMENT INSTALLATION

NOTE: THIS ARTICLE APPLIES TO THIS CONTRACT IF ANY WORK CONTEMPLATED BY THIS CONTRACT IS PERFORMED ON A FEDERAL GOVERNMENT INSTALLATION.

- (a) The Contractor shall, at its own expense, provide and maintain during the entire performance period of this Contract at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the Contract.
- (b) Before commencing work under this Contract, the Contractor shall certify to the University in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the University's interest shall not be effective (1) for such period as the laws of the State in which this Contract is to be performed prescribe or (2) until 30 days after the insurer or the Contractor gives written notice to the University, whichever period is longer.
- (c) The Contractor shall insert the substance of this article, including this paragraph (c), in subcontracts under this Contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the Contract. At least 5 days before entry of each such subcontractor's personnel on the Government installation, the Contractor shall furnish (or ensure that there has been furnished) to the University a current certificate of insurance, meeting the requirements of paragraph (b) above, for each such subcontractor.

ARTICLE 30. FEDERAL STATE AND LOCAL TAXES

- (a) "Contract date," as used in this article, means the date set for bid opening or, if this is a negotiated Contract or a modification, the effective date of this Contract or modification.

"All applicable Federal, State, and local taxes and duties," as used in this article, means all

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taxes and duties, in effect on the Contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this Contract.

"After-imposed Federal tax," as used in this article, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the Contract date but whose exemption was later revoked or reduced during the Contract period, on the transactions or property covered by this Contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the Contract date. It does not include social security tax or other employment taxes.

"After-relieved Federal tax," as used in this article, means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this Contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the Contract date.

- (b) The Contract price includes all applicable Federal, State, and local taxes and duties.
- (c) The Contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the Contract price, as a contingency reserve or otherwise.
- (d) The Contract price shall be decreased by the amount of any after-relieved Federal tax.
- (e) The Contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the University.
- (f) No adjustment shall be made in the Contract price under this article unless the amount of the adjustment exceeds \$100.
- (g) The Contractor shall promptly notify the University of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the Contract price and shall take appropriate action as the University directs.
- (h) The University shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

ARTICLE 31. PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS

- (a) The University shall pay the Contractor the Contract price as provided in this Contract.
- (b) The University may make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contract Administrator, on estimates approved by the Contract Administrator. If requested by the Contract Administrator, the Contractor shall furnish a breakdown of the total Contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates the Contract Administrator may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration if;
 - (1) Consideration is specifically authorized by this Contract; and
 - (2) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this Contract.
- (c) In making these progress payments, there shall be retained 10 percent of the estimated amount until final completion and acceptance of the Contract work. However, if the Contract Administrator finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contract Administrator may authorize payment to be made in full without retention of a percentage. When the work is substantially complete, the Contract Administrator shall retain an amount that the Contract Administrator considers adequate protection of the University and may release to the Contractor all or a portion of any excess amount. Also, on completion and acceptance of each separate building, public work, or other division of the Contract, for which the price is stated separately in the Contract, payment may be made for the completed work without retention of a percentage.
- (d) All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as
 - (1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or
 - (2) Waiving the right of the University to require the fulfillment of all of the terms of the Contract.
- (e) In making these progress payments, the University shall, upon request, reimburse the

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Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions of a paragraph (c) above shall not apply to that portion of progress payments attributable to bond premiums.

- (f) The University shall pay the amount due the Contractor under this Contract after
- (1) Completion and acceptance of all work;
 - (2) Presentation of a properly executed voucher; and
 - (3) Presentation of release of all claims against the University and Government arising by virtue of this Contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this Contract has been assigned under the Assignment of Claims Act of 1940 (33 U.S.C. 3727 and 41 U.S.C. 15).

ARTICLE 32. ASSIGNMENT OF CLAIMS

- (a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as the "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this Contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its rights under the original assignment to any type of financing institution described in the preceding sentence.
- (b) Any assignment or reassignment authorized under the act and this article shall cover all unpaid amount payable under this Contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this Contract.
- (c) The Contractor shall not furnish or disclose to any assignee under this Contract any classified document (including this Contract) or information related to work under this Contract until the Contract Administrator authorizes such action in writing.

ARTICLE 33. DISPUTES

- (a) Except as otherwise specified in this Contract, all disputes arising under or relating to this Contract shall be resolved in accordance with this article.

- (b) "Claim", as used in this article, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of Contract terms, or other relief arising under or relating to this Contract.
- (c) Unless otherwise provided for in the Contract, a claim by the Contractor must be filed within 30 calendar days after the Contractor knows or should have known of the facts giving rise thereto.
- (d) Any claim by the Contractor shall first be presented to the Contract Administrator, who shall attempt to resolve the matter in a reasonable amount of time. If the claim is not resolved by the Contract Administrator in a manner satisfactory to the Contractor, and the Contractor desires to pursue further action, the claim must be presented in writing to the Materials Management Division Leader for a written decision.
- (e) The Materials Management Division Leader shall investigate the issues involved in the claim and promptly issue a decision in writing. A copy of that decision shall be mailed to the Contractor and shall state the reasons for the decision.
- (f) The decision by the Materials Management Division Leader may be reviewed exclusively through the process stated in subsequent paragraphs of this article.
- (g) A claim by the University against the Contractor, or a decision by the Materials Management Division Leader regarding a claim by the Contractor, may be submitted to the DOE Contracting Officer for review and a written decision. Any such submittal by the Contractor shall be made within 30 calendar days after the Contractor's receipt of the Materials Management Division Leader's decision.
- (h) The decision of the DOE Contracting Officer shall be issued in a reasonable amount of time and shall be final unless one of the parties appeals the decision, within 30 days from the receipt of the decision, to the DOE Board of Contract Appeals. The decision of the Board shall be final and conclusive.
- (i) Pending final resolution of any claim, request for relief, appeal, or action arising under or relating to this Contract, the Contractor shall proceed diligently with performance of the Contract and in accordance with any direction of the Contract Administrator.
- (j) In connection with any proceeding at the Laboratory under this article, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. Any proceeding before the DOE shall be in accordance with its rules of procedure.

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ARTICLE 34. DIFFERING SITE CONDITIONS

- (a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contract Administrator of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the Contract.
- (b) The Contract Administrator shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this Contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this article and the Contract modified in writing accordingly.
- (c) No request by the Contractor for an equitable adjustment to the Contract under this article shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contract Administrator.
- (d) No request by the Contractor for an equitable adjustment to the Contract for differing site conditions shall be allowed if made after final payment under this Contract.

ARTICLE 35. SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

- (a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its costs, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the University, as well as from the drawings and specifications made a part of the Contract.

- . Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the University.
- (b) The University assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the University. Nor does the University assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this Contract, unless that understanding or representation is expressly stated in this Contract.

ARTICLE 36. MATERIAL AND WORKMANSHIP

- (a) All equipment, material, and articles incorporated into the work covered by the Contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this Contract. However, the Specifications and standards of this Contract do not, except where expressly specified to the contrary, exclude the use of recovered materials or require the item to be manufactured from virgin materials, so long as such use of recovered materials does not adversely affect performance requirements or expose suppliers' employees or other persons, including but not limited to occupants of the completed facility, to undue hazards from the recovered, non-virgin materials. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contract Administrator, is equal to that named in the specifications, unless otherwise specifically provided in this Contract.
- (b) The Contractor shall obtain the Contract Administrator's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contract Administrator the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this Contract or by the Contract Administrator, the Contractor shall also obtain the Contract Administrator's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so,

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the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

- (c) All work under this Contract shall be performed in a skillful and workmanlike manner. The Contract Administrator may require, in writing, that the Contractor remove from the work any employee the Contract Administrator deems incompetent, careless, or otherwise objectionable.

ARTICLE 37. SUPERINTENDENCE BY THE CONTRACTOR

At all times during performance of this Contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work a competent superintendent who is satisfactory to the Contract Administrator and has authority to act for the Contractor.

ARTICLE 38. PERMITS AND RESPONSIBILITIES

The Contractor shall, without additional expense to the University, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the Contract.

ARTICLE 39. OTHER CONTRACTS

The University or DOE may undertake or award other contracts or subcontracts for additional work at or near the site of the work under this Contract. The Contractor shall fully cooperate with the other contractors and contractors and with University and Government employees and shall carefully adapt scheduling and performing the work under this Contract to accommodate the additional work, heeding any direction that may be provided by the University. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or contractor or by University or Government employees.

ARTICLE 40. PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS

- (a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this Contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during Contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contract Administrator.
- (b) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this Contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contract Administrator may have the necessary work performed and charge the cost to the Contractor.

ARTICLE 41. OPERATIONS AND STORAGE AREAS

- (a) The Contractor shall confine all operations (including storage of materials) on Government premises to areas authorized or approved by the Contract Administrator. The Contractor shall hold and save the University and Government, their officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.
- (b) Temporary buildings (e.g. storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contract Administrator and shall be built with labor and materials furnished by the Contractor without expense to the University. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contract Administrator, the buildings and utilities may be abandoned and need not be removed.
- (c) The Contractor shall, under regulations prescribed by the University, use only established roadways, or use temporary roadways constructed by the Contractor when and as

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authorized by the Contract Administrator. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

ARTICLE 42. USE AND POSSESSION PRIOR TO COMPLETION

- (a) The University shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contract Administrator shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the University intends to take possession of or use. However, failure of the Contract Administrator to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the Contract. The University's possession or use shall not be deemed an acceptance of any work under the Contract.
- (b) While the University has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the University's possession or use, notwithstanding the terms of the article in this Contract entitled "Permits and Responsibilities." If prior possession or use by the University delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the Contract price or the time of completion, and the Contract shall be modified in writing accordingly.

ARTICLE 43. CLEANING UP

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the University.

ARTICLE 44. ACCIDENT PREVENTION

- (a) In performing this Contract, the Contractor shall provide for protecting the lives and health of employees and other persons; preventing damage to property, materials, supplies, and equipment; and avoiding work interruptions. For these purposes, the Contractor shall

- (1) Provide appropriate safety barricades, signs, and signal lights;
 - (2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and
 - (3) Ensure that any additional measures the University determines to be reasonably necessary for this purpose are taken.
- (b) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this Contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment. The Contractor shall report this data in the manner prescribed by the Contract Administrator.
 - (c) The Contract Administrator will notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the University may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.
 - (d) The Contractor shall be responsible for its subcontractors' compliance with this article.

ARTICLE 45. LAYOUT OF WORK

The Contractor shall lay out its work from University established base lines and bench marks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the University. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the University until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the University may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

ARTICLE 46. SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION

- (a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the University access

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thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contract Administrator, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The University shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

- (b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contract Administrator is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by", or "acceptable to", or "satisfactory to" the Contract Administrator, unless otherwise expressly stated.
- (c) Where "as shown", "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this Contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place", that is "furnished and installed".
- (d) Shop drawings means drawings, submitted to the University by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the Contract. The University may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this Contract.
- (e) If this Contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with Contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the University without evidence of the Contractor's approval may be returned for resubmission. The University will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the University's reasons therefor. Any work done before such approval shall be at the

Contractor's risk. Approval by the University shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this Contract, except with respect to variations described and approved in accordance with (f) below.

- (f) If shop drawings show variations from the Contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the University approves any such variation, the Contract Administrator will issue an appropriate Contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.
- (g) The Contractor shall submit to the University for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the University and one set will be returned to the Contractor. Upon completing the work under this Contract, the Contractor shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the equipment was completed and accepted.
- (h) This article shall be included in all subcontracts at any tier.

ARTICLE 47. CHANGES

- (a) The Contract Administrator may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the Contract, including changes
 - (1) In the specifications (including drawings and designs);
 - (2) In the method or manner of performance of the work;
 - (3) In the Government-furnished facilities, equipment, materials, services, or site; or
 - (4) Directing acceleration in the performance of the work.
- (b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contract Administrator that causes a change shall be treated as a change order under this article; provided, that the Contractor gives the Contract Administrator written notice stating (1) the date, circumstances, and source of the order and (2) that the Contractor regards the order as a change order.

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- (c) Except as provided in this article, no order, statement, or conduct of the Contract Administrator shall be treated as a change under this article or entitle the Contractor to an equitable adjustment.
- (d) If any change under this article causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this Contract, whether or not changed by any such order, the Contract Administrator will make an equitable adjustment and modify the Contract in writing. However, except for a "proposal for adjustment" (hereafter referred to as proposal) based on defective specifications, no proposal for any change under paragraph (b) above shall be allowed for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the University is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.
- (e) The Contractor must assert its right to an adjustment under this article within 30 days after (1) receipt of a written change order under paragraph (a) above or (2) the furnishing of a written notice under paragraph (b) above, by submitting to the Contract Administrator a written statement describing the general nature and amount of the proposal, unless this period is extended by the University. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.
- (f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this Contract.
- (g) If there is a failure to agree on any adjustment under this article, the Contractor may submit a claim under the Disputes Article. However, nothing in this article shall excuse the Contractor from proceeding with the Contract as changed.
- (1) Is to be a cost-reimbursement, time-and-materials, or labor-hour subcontract estimated to exceed \$25,000 including any fee;
- (2) Is proposed to exceed \$100,000; or
- (3) Is one of a number of subcontracts with a single subcontractor, under this Contract, for the same or related supplies or services, that in the aggregate are expected to exceed \$1,000,000.
- (c) The advance notification required by paragraph (b) above shall include;
- (1) A description of the supplies or services to be subcontracted;
- (2) Identification of the type of subcontract to be used;
- (3) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;
- (4) The proposed subcontract price and the Contractor's cost or price analysis;
- (5) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by provisions of this Contract;
- (6) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this Contract; and
- (7) A negotiation memorandum reflecting
- (i) The principal elements of the subcontract price negotiation;
- (ii) The most significant considerations controlling establishment or initial or revised prices;
- (iii) The reason cost or pricing data were or were not required;
- (iv) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
- (v) The extent, if any, to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and subcontractor; and the effect of any such defective data on the total price negotiated;
- (vi) The reasons for any significant difference between the Contractor's

ARTICLE 48. SUBCONTRACTS (FIXED-PRICE CONTRACTS)

NOTE: THIS ARTICLE APPLIES ONLY IF THE PRICE OF THIS CONTRACT EXCEEDS \$500,000.

- (a) This article does not apply to firm fixed-price contracts and fixed-price contracts with economic price adjustment. However, it does apply to subcontracts resulting from unpriced modifications to such contracts.
- (b) "Subcontract," as used in this article, includes but is not limited to purchase orders and changes and modifications to purchase orders. The Contractor shall notify the University reasonably in advance of entering into any subcontract if the Contractor does not have an approved purchasing system and if the subcontract;
- (vi) The reasons for any significant difference between the Contractor's

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price objective and the price negotiated; and

- (vii) A complete explanation of the incentives used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.
- (d) The Contractor shall obtain the Contract Administrator's written consent before placing any subcontract for which advance notification is required under paragraph (b) above. However, the Contract Administrator may ratify in writing any such subcontract. Ratification shall constitute the consent of the University.
- (e) Even if the Contractor's purchasing system has been approved, the Contractor shall obtain the Contract Administrator's written consent before placing subcontracts that have been selected for special surveillance and so identified elsewhere in this Contract.
- (f) Unless the consent or approval specifically provides otherwise, neither consent by the Contract Administrator to any subcontract nor approval of the Contractor's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the acceptability of any subcontract price of any amount paid under any subcontract, or (3) to relieve the Contractor of any responsibility for performing this Contract.
- (g) No subcontract placed under this Contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations in subsection 16.301-4 of the Federal Acquisition Regulation (FAR).
- (h) The University reserves the right to review the Contractor's purchasing system.

ARTICLE 49. GOVERNMENT PROPERTY - FIXED - PRICE CONTRACTS

(a) Government-furnished property

- (1) The University shall deliver to the Contractor, for use in connection with and under the terms of this Contract, the Government-furnished property described in the Schedule or specifications together with any related data and information that the Contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").
- (2) The delivery or performance dates for this Contract are based upon the expectation that Government-furnished property suitable for use (except for property

furnished "as-is") will be delivered to the Contractor at the times stated elsewhere in this Contract or, if not so stated, in sufficient time to enable the Contractor to meet the Contract's delivery or performance dates.

- (3) If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt of it, notify the Contract Administrator, detailing the facts, and, as directed by the Contract Administrator and at University expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Contract Administrator will make an equitable adjustment as provided in paragraph (h) of this article.
- (4) If Government-furnished property is not delivered to the Contractor by the required time, the Contract Administrator will, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this article.

(b) Changes in Government-furnished property

- (1) The Contract Administrator may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this Contract, or (ii) substitute other Government-furnished property for the property to be provided by the University, or to be acquired by the Contractor for the Government, under this Contract. The Contractor shall promptly take such action as the University may direct regarding the removal, shipment, or disposal of the property covered by such notice.
- (2) Upon the Contractor's written request, the Contract Administrator will make an equitable adjustment to the Contract in accordance with paragraph (h) of this article, if the University has agreed elsewhere in this Contract to make the property available for performing this Contract and there is any

- (i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or
- (ii) Withdrawal of authority to use this property, if provided under any other contract or lease.

(c) Title In Government property

- (1) The Government shall retain title to all Government-furnished property.
- (2) All Government-furnished property and all property acquired by the Contractor, title

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to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this article. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

- (3) Title to each item of facilities, special test equipment, and special tooling (other than that subject to a special tooling article) acquired by the Contractor for the University under this Contract shall pass to and vest in the Government when its use in performing this Contract commences or when the University has paid for it, whichever is earlier, whether or not title previously vested in the Government.
- (4) If this Contract contains a provision directing the Contractor to purchase material for which the University will reimburse the Contractor as a direct item of cost under this Contract
 - (i) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and
 - (ii) Title to all other material shall pass to and vest in the Government upon
 - (A) Issuance of the material for use in Contract performance;
 - (B) Commencement of processing of the material or its use in Contract performance; or
 - (C) Reimbursement of the cost of the material by the University, whichever occurs first.
- (d) Use of Government property

The Government property shall be used only for performing this Contract, unless otherwise provided in this Contract or approved by the University.
- (e) Property administration
 - (1) The Contractor shall be responsible and accountable for all Government property provided under this Contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5 and DOE Acquisition Regulation Subpart 945.5, as in effect on the date of this Contract.
 - (2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart

45.5 of the FAR and DOE Acquisition Regulation Subpart 945.5.

- (3) If damage occurs to Government property, the risk of which has been assumed by the University under this Contract, the University shall replace the items or the Contractor shall make such repairs as the University directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the University. When any property for which the University is responsible is replaced or repaired, the University shall make an equitable adjustment in accordance with paragraph (h) of this article.
- (4) The Contractor represents that the Contract price does not include any amount for repairs or replacement for which the University is responsible. Repair or replacement of property for which the Contractor is responsible shall be accomplished by the Contractor at its own expense.

(f) Access

The University and the Government and all their designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) Risk of loss

Unless otherwise provided in this Contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Contractor or upon passage of title to the Government under paragraph (c) of this article. However, the Contractor is not responsible for reasonable wear and tear to Government property properly consumed in performing this Contract.

(h) Equitable adjustment

When this article specifies an equitable adjustment, it shall be made to any affected Contract provision in accordance with the procedures of the Changes article. When appropriate, the Contract Administrator may initiate an equitable adjustment in favor of the University. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The University shall not be liable to suit for breach of contract for

- (1) Any delay in delivery of Government-furnished property;
- (2) Delivery of Government-furnished property in a condition not suitable for its intended use;
- (3) A decrease in or substitution of Government-furnished property; or

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- (4) Failure to repair or replace Government property for which the University is responsible.
- (i) Final accounting and disposition of Government property.

Upon completing this Contract, or at such earlier dates as may be fixed by the University, the Contractor shall submit, in a form acceptable to the University, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this Contract or delivered to the University. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contract Administrator. The net proceeds of any such disposal shall be credited to the Contract price or shall be paid to the University as the Contract Administrator directs.

(j) Communications

All communications under this article shall be in writing.

(k) Overseas contracts

If this Contract is to be performed outside of the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this article) shall be construed as "United States Government" and "United States Government-furnished," respectively.

ARTICLE 50. INSPECTION OF CONSTRUCTION

- (a) Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.
- (b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to Contract requirements. The Contractor shall maintain complete inspection records and make them available to the University. All work shall be conducted under the general oversight of the Contract Administrator and is subject to University inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of this Contract.
- (c) University inspections and tests are for the sole benefit of the University and do not
- (1) Relieve the Contractor of responsibility for providing adequate quality control measures;
 - (2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;

- (3) Constitute or imply acceptance; or

- (4) Affect the continuing rights of the University after acceptance of the completed work under paragraph (i) below.
- (d) The presence or absence of a University inspector does not relieve the Contractor from any Contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contract Administrator's written authorization.
- (e) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the University. The University may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The University shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the Contract.
- (f) The Contractor shall, without charge, replace or correct work found by the Contract Administrator not to conform to Contract requirements, unless in the public interest the University consents to accept the work with an appropriate adjustment in the Contract price. The Contractor shall promptly segregate and remove rejected material from the premises.
- (g) If the Contractor does not promptly replace or correct rejected work, the University may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor or (2) terminate for default the Contractor's right to proceed.
- (h) If, before acceptance of the entire work, the University decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction.
- However, if the work is found to meet Contract requirements, the Contract Administrator will make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.
- (i) Unless otherwise specified in the Contract, the University shall accept, as promptly as practicable after completion and inspection, all work required by the Contract or that portion of the work the Contract Administrator determines can be accepted separately. Acceptance shall be final and conclusive except

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for latent defects, fraud, gross mistakes amounting to fraud, or the University's rights under any warranty or guarantee.

ARTICLE 51. WARRANTY OF CONSTRUCTION

- (a) In addition to any other warranties in this Contract, the Contractor warrants, except as provided in paragraph (j) of this article, that work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.
- (b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the University takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the University takes possession.
- (c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of
 - (1) The Contractor's failure to conform to Contract requirements; or
 - (2) Any defect of equipment, material, workmanship, or design furnished.
- (d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this article. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.
- (e) The Contract Administrator will notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- (f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the University shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- (g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Contract, the Contractor shall
 - (1) Obtain all warranties that would be given in normal commercial practice;
 - (2) Require all warranties to be executed, in writing, for the benefit of the University, if directed by the Contract Administrator; and

(3) Enforce all warranties for the benefit of the University, if directed by the Contract Administrator.

- (h) In the event the Contractor's warranty under paragraph (b) of this article has expired, the University may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.
- (i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the University nor for the repair of any damage that results from any defect in Government-furnished material or design.
- (j) This warranty shall not limit the University's rights under the Inspection and Acceptance article of this Contract with respect to latent defects, gross mistakes, or fraud.

ARTICLE 52. VALUE ENGINEERING - CONSTRUCTION

- (a) General. The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any instant Contract savings realized from accepted VECP's in accordance with paragraph (f) below.
- (b) Definitions. "Collateral costs," as used in this article, means agency costs of operation, maintenance, logistic support, or Government-furnished property.

"Collateral savings," as used in this article, means those measurable net reductions resulting from a VECP in DOE's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

"Contractor's development and implementation costs," as used in this article, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by University acceptance of a VECP.

"University costs," as used in this article, means those University costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistic support. The term does not include the normal administrative costs of processing the VECP.

"Instant Contract savings," as used in this article, means the estimated reduction in Contractor cost of performance resulting from acceptance of the VECP, minus allowable Contractor's development and implementation costs, including subcontractors' development

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and implementation costs (see paragraph (h) below).

"Value engineering change proposal (VECP)" means a proposal that

- (1) Requires a change to this, the instant Contract, to implement; and
- (2) Results in reducing the Contract price or estimated cost without impairing essential functions or characteristics; provided, that it does not involve a change

(i) In deliverable end item quantities only; or

(ii) To the Contract type only

- (c) VECP preparation. As a minimum, the Contractor shall include in each VECP the information described in subparagraphs (1) through (7) below. If the proposed change is effected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

- (1) A description of the difference between the existing Contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, and the effect of the change on the end item's performance.
- (2) A list and analysis of the Contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.
- (3) A separate, detailed cost estimate for (i) the affected portions of the existing Contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (h) below.
- (4) A description and estimate of costs the University may incur in implementing the VECP, such as test and evaluation and operating and support costs.
- (5) A prediction of any effects the proposed change would have on collateral costs to the University.
- (6) A statement of the time by which a Contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the Contract completion time or delivery schedule.
- (7) Identification of any previous submission of the VECP, including the dates submitted, the agencies and contract

numbers involved, and previous University actions, if known.

- (d) Submission. The Contractor shall submit VECP's to the Project Engineer at the work site, with a copy to the Contract Administrator.

(e) University action.

- (1) The University shall notify the Contractor of the status of the VECP within 45 calendar days after the Contract Administrator receives it. If additional time is required, the Contract Administrator will notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The University will process VECP's expeditiously; however, it shall not be liable for any delay in acting upon a VECP.

- (2) If the VECP is not accepted, the Contract Administrator will notify the Contractor in writing, explaining the reasons for rejection. The contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the University. The Contract Administrator may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

- (3) Any VECP may be accepted, in whole or in part, by the Contract Administrator's award of a modification to this Contract citing this article. The Contract Administrator may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or a Contract modification applies a VECP to this Contract, the Contractor shall perform in accordance with the existing Contract. The Contract Administrator's decision to accept or reject all or part of any VECP shall be final and not subject to the Disputes article or otherwise subject to litigation under the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

(f) Sharing.

- (1) Rates. The Contractor's share of savings is determined by subtracting University costs from instant Contract savings and multiplying the result by (i) 55 percent for fixed-price contracts or (ii) 25 percent for cost-reimbursement contracts.

- (2) Payment. Payment of any share due the Contractor for use of VECP on this Contract shall be authorized by a modification to this Contract to

(i) Accept the VECP;

(ii) Reduce the Contract price or estimated cost by the amount of instant Contract savings; and

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- (iii) Provide the Contractor's share of savings by adding the amount calculated under subparagraph (1) above to the Contract price or fee.
- (g) Collateral savings. If a VECP is accepted, the instant Contract amount shall be increased by 20 percent of any projected collateral savings determined to be realized in a typical year of use after contracting any University costs not previously offset. However, the Contractor's share of collateral savings shall not exceed (1) the Contract's firm-fixed-price or estimated cost, at the time the VECP is accepted, or (2) \$1,000,000, whichever is greater. The Contract Administrator will be the sole determiner of the amount of collateral savings, and that amount shall not be subject to the Disputes article or otherwise subject to litigation under 41 U.S.C. 601-613.
- (h) Subcontracts. The Contractor shall include an appropriate value engineering article in any subcontract of \$50,000 or more and may include one in subcontracts of lesser value. In computing any adjustment in this subcontract's price under paragraph (f) above, the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs clearly resulting from a VECP accepted by the University under this Contract, but shall exclude any value engineering incentive payments to a subcontractor. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; provided, that these payments shall not reduce the University's share of the savings resulting from the VECP.
- (i) Data. The Contractor may restrict the University's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

"These data, furnished under the Value-Engineering Construction article of Contract, shall not be disclosed outside the University or Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the article. This restriction does not limit the University or Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations."

If a VECP is accepted, the Contractor hereby grants the University and Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the University and Government shall have the rights specified in the Contract modification implementing the VECP and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)

ARTICLE 53. TERMINATION FOR CONVENIENCE OF THE UNIVERSITY OR GOVERNMENT - FIXED-PRICE - SHORT FORM - ALTERNATE I

NOTE: THIS ARTICLE APPLIES TO THIS CONTRACT ONLY IF THE PRICE IS \$100,000 OR LESS.

- (a) The Contract Administrator, by written notice, may terminate this Contract, in whole or in part, when it is in the University's or the Government's interest. If this Contract is terminated, the rights, duties, and obligations of the parties, including compensation of the Contractor, shall be in accordance with Part 49 of the Federal Acquisition Regulation in effect on the date of this Contract.
- (b) Upon receipt of the termination notice, if title to property is vested in the Contractor under this Contract, it shall revert in the Government regardless of any other article of the Contract, except for property that the Contractor (a) disposed of by bona fide sale or (b) removed from the site.

ARTICLE 54. TERMINATION FOR CONVENIENCE OF THE UNIVERSITY OR GOVERNMENT - FIXED-PRICE - ALTERNATE I

NOTE: THIS ARTICLE APPLIES TO THIS CONTRACT IF THE PRICE EXCEEDS \$100,000.

- (a) The University may terminate performance of work under this Contract in whole or, from time to time, in part if the Contract Administrator determines that a termination is in the University or Government's interest. The Contract Administrator will terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.
- (b) After receipt of a Notice of Termination, and except as directed by the Contract Administrator, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this article:
- (1) Stop work as specified in the notice.
 - (2) Place no further subcontracts or orders (referred to as subcontracts in this article) for materials, services, or facilities, except as necessary to complete the continued portion of the Contract.
 - (3) Terminate all subcontracts to the extent they relate to the work terminated.
 - (4) Assign to the University, as directed by the Contract Administrator, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the University shall have the

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- right to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by the Contract Administrator, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this article.
- (6) As directed by the Contract Administrator, transfer title to the Government and then deliver to the University (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to the University.
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that the Contract Administrator may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which the University has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by the Contract Administrator, any property of the types referred to in subparagraph (6) above; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the DOE Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the University under this Contract, credited to the price or cost of the work, or paid in any other manner directed by the Contract Administrator.
- (c) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contract Administrator a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contract Administrator. The Contractor may request the University to remove those items or enter into an agreement for their storage. Within 15 days, the University will accept title to those items and remove them or enter into a storage agreement. The University may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (d) After termination, the Contractor shall submit a final termination settlement proposal to the Contract Administrator in the form and with the certification prescribed by the Contract Administrator. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contract Administrator upon written request of the Contractor within this 1-year period. However, if the Contract Administrator determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contract Administrator may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
- (e) Subject to paragraph (d) above, the Contractor and the Contract Administrator may agree upon the whole or part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) or paragraph (f) below, exclusive of costs shown in subparagraph (f)(3) below, may not exceed that total Contract price as reduced by (a) the amount of payments previously made and (2) the Contract price of work not terminated. The Contract shall be amended, and the Contractor paid the agreed amount. Paragraph (f) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- (f) If the Contractor and Contract Administrator fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Contract Administrator will pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (e) above:
- (1) For Contract work performed before the effective date of termination, the total (without duplication of any items) of
- (i) The cost of this work;
- (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract if not included in subdivision (i) above; and
- (iii) A sum, as profit on (i) above, determined by the Contract Administrator under 49.202 of the Federal Acquisition Regulation, in effect on the date of this Contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, the Contract Administrator will allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

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- (2) The reasonable costs of settlement of the work terminated, including
- (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (g) Except for normal spoilage, and except to the extent that the University expressly assumed the risk of loss, the Contract Administrator will exclude from the amounts payable to the Contractor under paragraph (f) above, the fair value, as determined by the Contract Administrator, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the University or to a buyer.
- (h) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this Contract, shall govern all costs claimed, agreed to, or determined under this article.
- (i) The Contractor shall have the right of appeal, under the Disputes article, from any determination made by the Contract Administrator under paragraph (d), (f), or (k), except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (d) or (k), and failed to request a time extension, there is no right of appeal. If the Contract Administrator has made a determination of the amount due under paragraph (d), (f), or (k), the University shall pay the Contractor (1) the amount determined by the Contract Administrator if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.
- (j) In arriving at the amount due the Contractor under this article, there shall be deducted
- (1) All unliquidated advance or other payments to the Contractor under the terminated portion of this Contract;
 - (2) Any claim which the University has against the Contractor under this Contract; and
 - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this article and not recovered by or credited to the University.
- (k) If the termination is partial, the Contractor may file a proposal with the University for an equitable adjustment of the price(s) of the continued portion of the Contract. The Contract Administrator will make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this article shall be requested within 90 days from the effective date of termination unless extended in writing by the Contract Administrator.
- (1) The University may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the Contract, if the Contract Administrator believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
- (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the University upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the University because of the circumstances.
- (l) Unless otherwise provided in this Contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this Contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor shall make these records and documents available to the University, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contract Administrator, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

ARTICLE 55. DEFAULT - FIXED PRICE CONSTRUCTION

- (a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this Contract including any extension, or fails to complete the work within this time, the University may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the University may take over the work and complete it by contract or otherwise, and may take possession of and

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use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the University resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the University in completing the work.

- (b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this article, if
- (1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) acts of another Contractor or Subcontractor in the performance of a contract with the Government, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and
- (2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contract Administrator), notifies the Contract Administrator in writing of the causes of delay. The Contract Administrator will ascertain the facts and the extent of delay. If, in the judgment of the University, the findings of fact warrant such action, the time for completing the work shall be extended. The finds of the Contract Administrator shall be final and conclusive on the parties, but subject to appeal under the Disputes article.
- (c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the University and Government.
- (d) The rights and remedies of the University in this article are in addition to any other rights and remedies provided by law or under this Contract.

ARTICLE 56. AUTHORIZATION AND CONSENT

THE PROVISIONS OF THIS ARTICLE SHALL BE APPLICABLE ONLY IF THE AMOUNT OF THIS CONTRACT EXCEEDS \$25,000.

- (a) The Government authorizes and consents to all use and manufacture, in performing this Contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the University on behalf of the Government under this Contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or any subcontractor with (i) specifications or written provisions forming a part of this Contract or (ii) specific written instructions given by the Contract Administrator directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity article, if any, included in this Contract or any subcontract hereunder, and the Government assumes liability for all other infringement to the extent of the authorization and consent herein above granted.
- (b) The Contractor agrees to include, and require inclusion of, this article, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services) expected to exceed \$25,000; however, omission of this article from any subcontract, under or over \$25,000, does not affect this authorization and consent.

ARTICLE 57. PATENT INDEMNITY - CONSTRUCTION CONTRACTS

Except as otherwise provided, the Contractor agrees to indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of performing this Contract or out of the use or disposal by or for the account of the Government of supplies furnished or work performed under this Contract.

ARTICLE 58. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

THE PROVISIONS OF THIS ARTICLE SHALL BE APPLICABLE ONLY IF THE AMOUNT OF THIS CONTRACT EXCEEDS \$25,000.

- (a) The Contractor shall report to the Contract Administrator, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Contract of which the Contractor has knowledge.
- (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this Contract or out of the use of any supplies furnished or work or services

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performed hereunder, the Contractor shall furnish to the Government when requested by the University, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

- (c) The Contractor agrees to include, and require inclusion of, this article in all subcontracts at any tier, which is expected to exceed \$25,000.

ARTICLE 59. REPORTING OF ROYALTIES

If this Contract is in an amount which exceeds \$10,000 and if any royalty payments are directly involved in the Contract or are reflected in the Contract price to the University, the Contractor agrees to report in writing to the Albuquerque Operations Office DOE Patent Counsel (with notification by Patent Counsel to the University) during the performance of this Contract and prior to its completion or final settlement, the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this Contract together with the names and addresses of licensors to whom such payments are made and either the Patent numbers involved or such other information as will permit the identification of the patents or other basis on which the royalties are to be paid. The approval of DOE of any individual payments or royalties shall not stop the Government at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made.

ARTICLE 60. RIGHTS IN DATA

(a) Definitions

- (1) "Computer software," as used in this article means computer programs, computer data bases, and documentation thereof.

"Data," as used in this article, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

"Form, fit and function data," as used in this article, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source,

functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

"Limited rights," as used in this article, means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this article.

"Limited Rights Data" as used in this article, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

"Restricted computer software," as used in this article, means computer software developed at private expense and that is a trade secret: is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of such computer software.

"Restricted rights," as used in this article means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in this article, or as otherwise may be provided in a collateral agreement incorporated in and made part of this Contract, including minor modifications of such computer software.

"Technical data," as used in this article, means data (other than computer software) which are of a scientific or technical nature.

"Unlimited rights," as used in this article, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of Rights

- (1) Except as provided in paragraph (c) of this article regarding copyright, the Government shall have unlimited rights in

(i) Data first produced in the performance of this Contract;

(ii) Form, fit, and function data delivered under this Contract;

(iii) Data delivered under this Contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of

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items, components, or processes delivered or furnished for use under this Contract; and

- (iv) All other data delivered under this Contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this article.

- (2) The Contractor shall have the right to -

- (i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this Contract, unless provided otherwise in paragraph (d) of this article;
- (ii) Protect from authorization disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this article;
- (iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this article; and
- (iv) Establish claim to copyright subsisting in data first produced in the performance of this Contract to the extent provided in subparagraph (c)(1) of this article.

(c) Copyright

- (1) Data first produced in the performance of this Contract. Unless otherwise provided in paragraph (d) of this article, the Contractor may establish, without prior approval of the Contract Administrator, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this Contract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the Contract Administrator is required to establish claim to copyright subsisting in all other data first produced in the performance of this Contract. When claim to copyright is made, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to

reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copy-righted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.

- (2) Data not first produced in the performance of this Contract. The Contractor shall not, without prior written permission of the Contract Administrator, incorporate in data delivered under this Contract any data not first produced in the performance of this Contract and which contains the copyright notice of 17 U.S.C. 401 or 401, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this article; provided, however, that if such data are computer software the Government shall acquire a copyright license as set forth in subparagraph (g)(3) of this article if included in this Contract or as otherwise may be provided in a collateral agreement incorporated in or made part of this Contract.

- (3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release publication and use of data.

- (1) The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this Contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this article or expressly set forth in this Contract.
- (2) The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this Contract which contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contract Administrator.

(e) Unauthorized marking of data

- (1) Notwithstanding any other provisions of this Contract concerning this inspection or acceptance, if any data delivered under this Contract are marked with the notices specified in subparagraph (g)(2) or (g)(3) of this article and use of such is not authorized by this article, or if such

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data bears any other restrictive or limiting markings not authorized by this Contract, the Contract Administrator may at any time either return the data to the Contractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

- (1) The Contract Administrator shall make written inquiry to the Contractor affording the Contractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;
- (ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contract Administrator for good cause shown), the Government shall have the right to cancel or ignore the marking at any time after period and the data will no longer be made subject to any disclosure prohibitions.
- (iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this article, the Contract Administrator shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contract Administrator determines that the markings are authorized, the Contractor shall be so notified in writing. If the Contract Administrator determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contract Administrator shall furnish the Contractor a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in court of competent jurisdiction within 90 days of receipt of the Contract Administrator's decision. The Government shall continue to abide by the markings under this subdivision (e)(1)(iii) until final resolution of the matter either by the Contract Administrator determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision is suit is filed.
- (2) The time limits in the procedures set forth in subparagraph (e)(1) of this

article may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

- (3) This paragraph (e) does not apply if this Contract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard Agency subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949.
- (4) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by this paragraph (e) from bringing a claim under the Contract Disputes Act, including pursuant to the Disputes article of this Contract, as applicable, that may arise as the result of the Government removing or ignoring markings on data delivered under this contract.

(f) Omitted or incorrect Markings

- (1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) of this article, or the copyright notice required by paragraph (c) of this article, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 month (or a longer time approved by the Contract Administrator for good cause shown) after delivery of such data, permission to have notices place on qualifying data at the Contractor's expense, and the Contract Administrator may agree to do so if the Contractor -
 - (i) Identifies the data to which the omitted notice is to be applied.
 - (ii) Demonstrates that the omission of the notice was inadvertent;
 - (iii) Establishes that the use of the proposed notice is authorized; and
 - (iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction or any such data made prior to the addition of the notice or resulting from the omission of the notice.
- (2) The Contract Administrator may also
 - (i) permit correction at the Contractor's expense of incorrect notices if the Contractor identifies the data on which correction of the notice is to

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be made, and demonstrates that the correct notice is authorized, or

(ii) Correct any incorrect notices

(g) Protection of limited rights data and restricted computer software.

(1) When data other than that listed in subdivision (b)(1)(i), (ii) and (iii) of this article are specified to be delivered under this Contract and qualify as either limited rights data or restricted computer software, if the Contractor desires to continue protection of such data, the Contractor shall withhold such data and not furnish them to the Government under this Contract. As a condition to this withholding, the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Government are to be treated as limited rights and not restricted computer software.

(2) Reserved

(3) Reserved

(h) Subcontracting

The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this Contract. If a subcontractor refuses to accept terms affording the Government such rights, the Contractor shall promptly bring such refusals to the attention of the Contract Administrator and not proceed with contract award without further authorization.

(i) Relationship to patents.

Nothing contained in this article shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(j) The Contractor agrees

Except as may be otherwise specified in this Contract for specific data items listed as not subject to this paragraph, that the Contract Administrator or an authorized representative may, up to three years after acceptance of all items to be delivered under this Contract, inspect at the Contractor's facility any data withheld pursuant to paragraph (g)(1) of this article, for purposes of verifying the Contractor's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Contractor whose data are to be inspected demonstrates to the Contract Administrator that there

would be a possible conflict of interest if the inspection were made by a particular representative, the Contract Administrator shall designate an alternate inspector.

ARTICLE 61 ADDITIONAL DATA REQUIREMENTS

(a) In addition to the data (as defined in the article 61, Rights in Data) the Contract Administrator may, at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under this Contract, order any data first produced or specifically used in the performance of this Contract.

(b) The Rights in Data-Article is applicable to all data ordered under this Additional Data Requirements article. Nothing contained in this article shall require the Contractor to deliver any data the withholding of which is authorized by the Rights in Data-Article, or data which are specifically identified in this contract as not subject to this article.

(c) When data are to be delivered under this article, the Contractor will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(d) The Contract Administrator may release the Contractor from the requirements of this article for specifically identified data items at any time during the 3 year period set forth in paragraph (a) of this article.

ARTICLE 62 SECURITY

(a) Contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information, and protecting against sabotage, espionage, loss and theft the classified documents and material in the Contractor's possession in connection with the performance of work under this Contract. Except as otherwise expressly provided in this Contract, the Contractor shall, upon completion or termination of this Contract, transmit to the University any classified matter in the possession of the Contractor or any person under the Contractor's control in connection with performance of this Contract. If retention by the Contractor of any classified matter is required after the completion or termination of the Contract and such retention is approved by the Contract Administrator, the Contractor will complete a certificate of possession to be furnished to the University specifying the classified matter to be retained. The certification shall identify the items and types or categories of matter

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retained, the conditions governing the retention of the matter, and the period of retention, if known. If the retention is approved by the Contract Administrator, the security provisions of the Contract will continue to be applicable to the matter retained. Special nuclear material will not be retained after the completion or termination of the Contract.

- (b) Regulations. The Contractor agrees to conform to all security regulations and requirements of DOE and the University.
- (c) Definition of classified information. The term "classified information" means Restricted Data, Formerly Restricted Data, or National Security Information.
- (d) Definition of Restricted Data. The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142d of the Atomic Energy Act of 1954, as amended.
- (e) Definition of Formerly Restricted Data. The term "Formerly Restricted Data" means all data removed from the Restricted Data category under Section 142 of the Atomic Energy Act of 1954, as amended.
- (f) Definition of National Security Information. The term "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.
- (g) Definition of Special Nuclear Material (SNM). SNM means (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.
- (h) Security clearance of personnel. The Contractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.
- (i) Criminal Liability. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive

it, or failure to safeguard any classified information that may come to the Contractor or any person under the Contractor's control in connection with work under this Contract, may subject the Contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2100 et seq.; 18 U.S.C. 793 and 794; and Executive Order 12356).

- (j) Subcontracts and purchase orders. Except as otherwise authorized in writing by the Contract Administrator, the Contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this Contract.

ARTICLE 63 VARIATION IN ESTIMATED QUANTITY

If the quantity of a unit-priced item in this Contract is an estimated quantity and the actual quantity of the unit-priced item varies more than 15 percent above or below the estimated quantity, an equitable adjustment in the Contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request, in writing, an extension of time, to be received by the Contract Administrator within 10 days from the beginning of the delay, or within such further period as may be granted by the Contract Administrator before the date of final settlement of this Contract. Upon the receipt of a written request for an extension, the Contract Administrator will ascertain the facts and make an adjustment for extending the completion date as, in the judgment of the Contract Administrator, is justified.

ARTICLE 64 PRIORITIES, ALLOCATIONS, AND ALLOTMENTS (ATOMIC ENERGY)

The Contractor shall follow the provisions of the Defense Priorities and Allocations System (DPAS) Regulations (see 15 CFR Part 350) and all other applicable regulations and orders of the DPAS in obtaining controlled materials and other products and materials needed to fill this Contract.

ARTICLE 65. SAFETY AND HEALTH

The Contractor shall take all reasonable precautions in the performance of the work under this Contract to protect the safety and health of employees and of members of the public and shall comply with all applicable safety and health regulations and requirements (including reporting requirements) of DOE and University. The University shall notify the Contractor, in writing, of any noncompliance with the provisions of the article and the corrective action to be taken. After receipt of such notice, the Contractor shall immediately take corrective

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action. The Contractor shall submit a management program and implementation plan to the University for review and approval within 30 days after the date of award of this Contract. In the event that the Contractor fails to comply with said regulations or requirements of the DOE and University, the Contract Administrator may, without prejudice to any other legal or contractual rights of the University, issue an order stopping all or any part of the work; thereafter, a start order for resumption of the work may be issued at the discretion of the Contract Administrator. The Contractor shall make no claim for an extension of time or for compensation or damages by reason of, or in connection with, such work stoppage.

ARTICLE 66. QUANTITY SURVEYS

THIS ARTICLE APPLIES ONLY IF THE CONTRACT PROVIDES FOR UNIT PRICING OF ITEMS AND FOR PAYMENT BASED ON QUANTITY SURVEYS.

- (a) Quantity surveys shall be conducted, and the data derived from these surveys shall be used in computing the quantities of work performed and the actual construction completed and in place.
- (b) The University shall conduct the original and final surveys and make the computations based on them. The Contractor shall conduct the surveys for any periods for which progress payments are requested and shall make the computations based on these surveys. All surveys conducted by the Contractor shall be conducted under the direction of a representative of the Contract Administrator, unless the Contract Administrator waives this requirement in a specific instance.
- (c) Promptly upon completing a survey, the Contractor shall furnish the originals of all field notes and all other records relating to the survey or to the layout of the work to the Contract Administrator, who shall use them as necessary to determine the amount of progress payments. The Contractor shall retain copies of all such material furnished to the Contract Administrator.

ARTICLE 67. ENTIRE AGREEMENT

This Contract embodies the entire agreement between the University and Contractor and supersedes all prior oral or written agreements. The parties shall not be bound by, or be liable for any statement, representation, promise, inducement or understanding not set forth herein. No amendments or modifications of any of the terms or conditions shall be valid unless reduced to writing and signed by both parties. No terms and conditions appearing on any form originated by the Contractor shall be applicable.

ARTICLE 68. INDEPENDENT CONTRACTOR

Contractor represents that it is fully experienced, properly qualified, registered, licensed, equipped, organized and financed to perform the work under this Contract. Contractor shall act as an independent contractor and not as the agent of the University in performing this Contract, maintaining complete control over its employees and all of its suppliers and subcontractors. Nothing contained in this Contract or any subcontract awarded by contractors shall create any contractual relationship between any supplier or subcontractor and the University. Contractor shall perform its work hereunder in accordance with its own methods subject to compliance with the Contract.

ARTICLE 69. ASSIGNMENT

This Contract is assignable by the University to the Government or its designee. Any assignment by the Contractor of the work to be performed, in whole or in part, or of any other interest hereunder without the University's written consent, except an assignment pursuant to the "Assignment of Claims" article shall be void. It is expressly agreed that any such assignment of moneys shall be void to the extent that it attempts to impose upon the University obligations to the assignee additional to the payment of such moneys, or to preclude the University from dealing solely and directly with the Contractor in all matters pertaining hereto, including the negotiation of amendments or settlements of amounts due.

ARTICLE 70. AUTHORIZED REPRESENTATIVES

Before starting work, Contractor shall designate in writing an authorized representative acceptable to the University to represent and act for Contractor and shall specify any limitations of such representative's authority. Such representative shall be present or be represented at the work site at all times when work is in progress, and shall be empowered to receive communications in accordance with this Contract on behalf of Contractor. Notification of changes of authorized representatives for the Contractor shall be provided in advance, in writing, to the Contract Administrator.

ARTICLE 71. NOTICES

Any notices shall be in writing and may be served either personally on the authorized representative of the receiving party at the job site or by certified mail return receipt requested to address of that party as shown on the face of the Contract agreement form or as such address may have been changed by written notice.

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ARTICLE 72. RELEASE OF INFORMATION

The interest of the University or the DOE or the Government in this Contract shall not be indicated in any advertising or publicity without advance written approval of the Contract Administrator.

ARTICLE 73. ANTI-KICKBACK PROCEDURES

(a) Definitions.

"Kickback," means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to the University, a University employee, contractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a subcontract at any tier relating to the prime contract.

"Person," means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," means contract W-7405-ENG-36 between the United States Department of Energy (DOE) and The University of California, Los Alamos National Laboratory (University) for the purpose of obtaining supplies, materials, equipment, or services.

"University employee," means any officer, employee, or agent of the University.

"Contract," means a contract or contractual action entered into by the University or a higher-tier contractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under the prime contract.

"Contractor," (1) means any person, other than the University or Government, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under the prime contract or under a contract entered into in connection with the prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the University or a higher-tier contractor.

"Contractor employee," means any officer, partner, employee, or agent of a contractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from-

- (1) Providing or attempting to provide or offering to provide any kickback;
- (2) Soliciting, accepting, or attempting to accept any kickbacks; or

- (3) including, directly or indirectly, the amount of any kickback in the contract price charged by a contractor to the University or higher-tier contractor.

(c)

- (1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations of the Act in its own operations and in its direct business relationships in connection with the prime contract.
- (2) When the Contractor has reasonable grounds to believe that a violation of the Act may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the Material Management Division Leader, the Controller, or the Laboratory Counsel of the University.
- (3) The Contractor shall cooperate fully with any investigation of a possible violation of the Act.
- (4) Regardless of the contract tier at which a kickback was provided, accepted, or charged in connection with the prime contract in violation of the Act, the University may-
 - (i) Offset the amount of the kickback against any monies owed by the University under the Contract, and/or
 - (ii) Direct the Contractor to withhold from sums owed the subcontractor, the amount of the kickback. The University may direct that monies withheld be paid to the DOE or, if the DOE has offset the monies under the prime contract, to be paid to the University.
 - (iii) Nothing in this article precludes any contractual or common law remedy available to the University.

- (5) The Contractor agrees to incorporate the substance of this article, including this subparagraph (c)(5), in all subcontracts under this Contract.

ARTICLE 74. LIMITATION ON SUBCONTRACTING

- (a) This article does not apply to the unrestricted portion of a partial set-aside. By submission of a bid and execution of a contract, the Contractor agrees that in performance of the contract in the case of a contract for
 - (1) Service (except Construction). At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.

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- (2) Supplies (other than procurement from a regular dealer in such supplies). The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.
- (3) General Construction. The concern shall perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.
- (4) Construction by special trade contractors. The concern shall perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

ARTICLE 75. PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT

- (a) The Government suspends or debar Contractors to protect the Government's interests. Contractors shall not enter into any subcontract equal to or in excess of \$25,000 with a contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so. If a Contractor intends to subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the list of parties excluded from Procurement Programs), a corporate officer or designee of the Contractor shall notify the Contract Administrator, in writing, before entering into such contract. The notice must include the following
 - (1) The name of the contractor
 - (2) The Contractor's knowledge of the reasons for the contractor being on the list of Parties Excluded from Procurement Programs;
 - (3) The compelling reason(s) for doing business with the contractor notwithstanding its inclusion on the list of Parties Excluded from Procurement Programs; and
 - (4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such contractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.
- (b) The Contractor's compliance with the requirements of this article will be reviewed during Contractor Purchasing System Reviews.

ARTICLE 76. RESTRICTIONS ON CONTRACTING WITH SANCTIONED PERSONS

(a) Definitions.

- (1) "Component part" means any article which is not usable for its intended functions without being imbedded or integrated into any other product and which, if used in

production of a finished product, would be substantially transformed in that process.

- (2) "Finished product" means any article which is usable for its intended function without being imbedded in, or integrated into, any other product. It does not include an article produced by a person, other than a sanctioned person, that contains parts or components of the sanctioned person if the parts or components have been substantially transformed during production of the finished product.
- (3) "Sanctioned person" means a company or other foreign person upon whom prohibitions have been imposed.
- (4) "Substantially transformed" when referring to a component part or finished product means that the part or finished product has been subjected to a substantial manufacturing or processing operation by which the part or product is converted or combined into a new and different article of commerce having a new name, character, and use.

(b) General

Section 2443 of the Multilateral Export Control Enhancement Amendment Act (Pub L. 100-418) and Executive Order 12661, effective December 28, 1988, impose, for a period of 3 years, with certain exceptions, a prohibition on contracting with, or procuring (including rental and lease/purchase) directly or indirectly the products or service of (1) Toshiba Machine Company, (2) Kongsberg Trading Company, (3) Toshiba Corporation, or (4) Kongsberg Vaapenfabrickk. The Act and Executive Order also prohibit, for the same 3 year period, the importation into the United States of all products produced by Toshiba Machine Company and Kongsberg Trading Company. These prohibitions also apply to subsidiaries, successor entities or joint ventures of Toshiba Machine Company or Kongsberg Trading Company.

(c) Restriction.

Unless listed by the Contractor in its bid, in the Representations and Certifications article 15, Notice of Restrictions on Contracting with Sanctioned Persons, or unless one of the exceptions in paragraph (d) of this article applies, the Contractor agrees that no products or services delivered to the Government under this Contract will be products or services of a sanctioned person.

(d) Exceptions.

The restrictions do not apply -

- (1) To finished products of nonsanctioned persons containing components of a sanctioned person if these components have been substantially transformed during the manufacture of the finished product.

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(2) To products or services of a sanctioned person provided -

- (i) The products are designed to the specifications of a nonsanctioned person marketed under the trademark, brand or name of the nonsanctioned person;
- (ii) The business relationship between the nonsanctioned person and the sanctioned person clearly existed prior to June 30, 1987; and
- (iii) The nonsanctioned person is not directly or indirectly owned by a sanctioned person.

(3) If a determination has been made in accordance with FAR 25.1003(a) or (b).

(e) Award.

The award of this Contract has not affected, and does not affect, the Contractor's obligation to comply with important regulations of the Secretary of Treasury.

END OF GENERAL PROVISIONS

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